

RESOLUTION NO. 08-31

**RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND
ECONOMIC DEVELOPMENT BANK APPROVING INFRASTRUCTURE
STATE REVOLVING FUND PROGRAM FINANCING NOT TO EXCEED
\$1,793,000 FOR EAST ORANGE COUNTY WATER DISTRICT**

WHEREAS, the California Infrastructure and Economic Development Bank ("I-Bank") has determined that the East Orange County Water District ("Borrower") submitted a timely and complete application ("Application") requesting Infrastructure State Revolving Fund ("ISRF") Program financing for the New Well Construction and Newport-Barrett-Marcy Distribution Main Replacement Project (the "Project"); and

WHEREAS, the Borrower's Application and Project meet all eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria, Priorities and Guidelines ("Criteria") for the ISRF Program; and

WHEREAS, in addition to certain preliminary expenditures, the Borrower may pay certain expenditures (the "Reimbursable Expenditures") in connection with the Project prior to the issuance by the I-Bank of indebtedness for the purpose of financing costs associated with the Project on a long-term basis; and

WHEREAS, the I-Bank reasonably expects that a portion of tax-exempt bonds in an aggregate amount not expected to exceed \$1,793,000 will be issued to finance the costs of the Project and that certain of the proceeds of the tax-exempt bonds will be used to reimburse the Reimbursable Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the I-Bank to declare its reasonable official intent to reimburse Reimbursable Expenditures for the Project with proceeds of a subsequent borrowing;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank ("Board"), as follows:

Section 1. Based upon information presented at the meeting where adoption of this resolution was presented and the staff report presented to the Board, the Board makes the following findings:

(a) Borrower meets the definition of "sponsor" pursuant to Government Code Section 63010 (u) and is thus an eligible recipient of financing;

(b) The Project meets the definition of "public development facility" pursuant to Government Code Section 63010(q) and is thus an eligible project to be financed;

(c) The categories of Project costs proposed to be paid with ISRF Program funds meet the definition of "Costs" pursuant to Government Code Section 63010(f) and thus are eligible for ISRF Program financing;

(d) Borrower adopted a resolution consistent with the requirements of Government Code Section 63041;

(e) Borrower meets the "need for I-Bank financing" and "readiness to proceed" criteria contained in the Criteria;

(f) Borrower and Project are eligible for tax-exempt financing under Federal law, without an allocation of private activity bond volume cap as required in the Criteria;

(g) The Project will not result in a "business relocation" as defined in the Criteria;

(h) The proposed financing complies with the underwriting criteria and sources of loan repayment specified in the Criteria; and

(i) The proposed Project is financially feasible, with all Project funding sources identified and committed.

Section 2. The provision of ISRF Program funds to the Borrower is consistent with the terms and conditions specified in Attachment A to this resolution, is hereby approved. The Chair or the Executive Director and the Secretary are authorized to execute all documents, certificates and other written agreements reasonably necessary to effectuate the described financing. The authority to execute financing documents shall expire automatically two hundred and ten (210) days from the adoption of this resolution.

Section 3. This resolution and the Board's approval do not constitute a commitment to finance the Project, but instead sets forth the terms and conditions that shall be contained in the financing agreement with the Applicant. It is the understanding that the financing agreement will require considerable conditions and agreements on the part of the Applicant in order to adequately protect the interests of the I-Bank. Attachment A is meant solely to call out minimum terms and conditions specific to this financing and is not meant as a listing of conditions of sufficient specificity to constitute a commitment to finance.

Section 4. This resolution is adopted for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This resolution does not bind the I-Bank to make any expenditure, incur any indebtedness, or proceed with the financing of the Project.

Section 5. All of the Reimbursable Expenditures covered by this resolution were made not earlier than 60 days prior to the date of this resolution.

Section 6. The Board hereby declares its reasonable official intent to use proceeds of tax-exempt bonds to reimburse the Borrower for the Reimbursable Expenditures.

Section 7. This resolution shall take effect from and after its adoption.

PASSED, APPROVED, AND ADOPTED at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on October 28, 2008 by the following vote:

AYES: Bonner, Marin, Sheehy, Carroll, Rice

NOES: None

ABSENT: None

ABSTAIN: None

By: Stanton C. Hazelroth
Stanton C. Hazelroth, Executive Director

ATTEST

By: Roma Cristia-Plant
Roma Cristia-Plant, Secretary

ATTACHMENT A

Staff recommends approval of Resolution No. 08-31 authorizing financing for the East Orange County Water District for the Project as follows:

1. **Borrower:** East Orange County Water District.
2. **Project:** New Well Construction and Newport-Barrett-Marcy Distribution Main Replacement Project.
3. **Amount of Financing:** Not to exceed \$1,793,000.
4. **Maturity:** Not to exceed 20 years.
5. **Funding Availability:** I-Bank's financing commitment is subject to the availability of funds from either, or a combination of, proceeds of a revenue bond or I-Bank equity funds.
6. **Repayment/Security:** Lien on the Retail Zone Enterprise Fund net revenues inclusive of property tax revenues, subordinate to the California State Department of Water Resources Contact #E62023.
7. **Interest Rate:** 67% of Thompson's Municipal Market Data Index for an "A" rated tax-exempt security with a weighted average life similar to the I-Bank financing based on the rates on October 1, 2008
8. **Fees:** Financing origination fee of 0.85% of the I-Bank financing and an annual fee of 0.3% of the outstanding principal balance.
9. **Type of Financing Agreement:** Installment Sale Agreement.
10. **Financing Agreement Covenants:** The Installment Sale Agreement shall include, among other things, the following covenants:
 - a. Rates and charges shall be maintained sufficient to ensure 1.10 times aggregate annual debt service ratio.
 - b. Retail Zone Enterprise Fund net revenues may not be pledged on a senior basis. Net Revenues may be pledged on a parity basis for future financing if net revenues (adjusted for adopted rate increases and system expansion) will provide future debt service coverage of 1.10 times maximum annual debt service on all parity debt, inclusive of the proposed financing.
 - c. The District may request to prepay all or a portion of the financing amount. A request for a reduction is considered a prepayment. The I-Bank shall respond promptly to any prepayment request, and shall make every effort to accommodate the request, subject to the prepayment restrictions of the bonds to which this financing is pledged. Notwithstanding the above, the District shall be authorized to prepay all or a portion of the outstanding principal balance according to the following: 102% of the outstanding principal balance if the prepayment date is on or after ten years, but less than eleven years, from the effective date of the Installment Sale Agreement; 101% of the outstanding principal balance if the prepayment date is on or after eleven years, but less than twelve years, from the effective date of the Installment Sale Agreement; or without premium if the prepayment date is twelve years or more from the effective date of the Installment Sale Agreement. The District may on any date provide for a legal defeasance of the principal amount outstanding and any additional payment then due.
 - d. An agreement to indemnify I-Bank and its directors, officers and employees from any liability arising from the Installment Sale Agreement or from construction or operation of the Project.

11. Conditions Precedent to Agreement Execution:

- a. Adopted District resolution authorizing the execution and delivery of the Installment Sale Agreement and approving certain other matters in connection therewith.
- b. Receipt of an opinion of legal counsel to the District that, following a review of all relevant documents, including the July 1, 1994 Allocation of Proceeds of Sale of Allen-McColloch Pipeline Agreement (1994 Proceeds Agreement), and the 1995 First Amendment For Allocation of Proceeds of Sale of Allen-McColloch Pipeline (the 1995 Amendment), that includes at a minimum the following opinions: a) that the District has the legal authority to enter into the Installment Sale Agreement; b) there is no litigation currently pending or threatened that would in any way affect pledged revenues or obligations under the Installment Sale Agreement; c) the Installment Sale Agreement is a legal, binding and enforceable agreement of the District; and d) there are no existing contractual obligations of the District that would in any material way adversely affect the pledged of revenues under the Installment Sale Agreement or authority to enter into the Installment Sale Agreement; and e) the entry into the Installment Sale Agreement will not in any material respect conflict with or constitute a breach of or default under any agreement or other instrument to which the District is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the District is subject.
- c. California State Department of Water Resources written consent for District to enter into Installment Sale Agreement with the I-Bank.
- d. Receipt of a copy of the 1994 Proceeds Agreement and conclusion of I-Bank staff that the terms and conditions of the 1994 Proceeds Agreement are acceptable to the I-Bank.
- e. Executed Tax Certificate.

12. Conditions Precedent to Initial Disbursement: The following are some of the conditions, which will be required precedent to the initial disbursement of I-Bank funds:

- a. Execution of an Installment Sale Agreement consistent with the terms contained herein.

13. Conditions Precedent to Construction Disbursement for each Project Phase. The following are some of the conditions, which will be required precedent to the initial construction disbursement of I-Bank funds for each phase of the Project:

- a. Certificate of the District Manager, legal counsel or other individual acceptable to the I-Bank that the District:
 - i. Has obtained any and all lands, rights-of-ways, lot line adjustments, easements, and orders of possession, which are required for construction.
 - ii. All required construction permits have been obtained.
- b. For initial disbursement related to the construction of the well:
 - i. Certificate executed by the District's General Manager stating that a) the new well has been drilled, b) that all required testing has been completed successfully, and c) the new well has been determined to be sufficient for the proposed water production purposes.
- c. For each construction contract:
 - i. A written statement by the District Manager, legal counsel or other individual acceptable to the I-Bank that:
 - (1) All construction contracts and subcontracts necessary for the construction of the applicable Project component have been awarded, and were awarded pursuant to competitive bidding and the District procedures normally required for similar construction projects.

- (2) Project costs for the applicable Project component are consistent with the Sources and Uses listed in this staff report.
 - (3) All prime construction contracts include a requirement that the appropriate builder's risk insurance will be provided and name District as additional insured and loss payee, require the contractor to maintain liability insurance and name the District as an additional insured, and include performance and payment bond provisions and name the District as additional payee.
 - (4) All construction contracts are let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by the District, and damages or delays authorized by the laws of the State.
 - (5) All construction contracts require payment of prevailing wage rates and compliance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.
 - (6) All construction contracts require payment of workers' compensation insurance by contractors and subcontractors.
 - (7) All construction contracts include the nondiscrimination provisions.
 - ii. Submittal of a copy of the complete construction contract.
 - iii. Submittal of a copy of the builder's risk insurance policy, and a copy of the contractor's payment and performance bonds.
- 14. Conditions Precedent to Final Disbursement:** The following are some of the conditions precedent to final disbursement of I-Bank funds:
- a. Recorded Notice of Completion or other evidence of completion for each Project component.
 - b. Lien waivers for the Project, or passage of the applicable statutory time periods for filing mechanics and other similar liens.
 - c. Certification that the Project has been completed in accordance with the approved plans and specifications, and that the completed Project is consistent with the definition of Project in this staff report and is acceptable to the District.
 - d. Certification that the District has obtained all licenses and permits (including operating permits), and approvals from any governmental agency or authority having jurisdiction over the District in connection with the Project.
- 15. Financial and Other Reporting Requirements:**
- a. Annual District audited financial statements, segmenting the Wholesale Zone Water Enterprise Fund and the Retail Zone Water Enterprise Fund, due to the I-Bank within 210 days of fiscal year end.
 - b. Other information as the I-Bank may request from time to time.